

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2019-031-10032R

Parcel No. 04-20-401-001

Thomas G. Schieltz,

Appellant,

vs.

Dubuque County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on November 7, 2019. Thomas Schieltz was self-represented. Dubuque County Attorney C.J. May represented the Board of Review.

Schieltz owns a property located at 25325 Route 52 N, Holy Cross. The property's January 1, 2019, assessment was set at \$300,440, allocated as \$74,600 in land value and \$225,840 in improvement value. The property was reclassified from agricultural to residential for the 2019 assessment. (Ex. A).

Schieltz petitioned the Board of Review claiming his property was misclassified. Iowa Code § 441.37(1)(a)(3). (Ex. C). The Board of Review denied the petition. (Ex. B).

Schieltz appealed to PAAB reasserting his claim of misclassification. He believes the property should be classified agricultural.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2019). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). PAAB determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); see also *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Findings of Fact

The subject parcel is a 6.510-acre site improved with a residence and multiple outbuildings including a machine shed, a milking barn, hog house and hog confinement building, two grain bins, a milk house, and a Harvestore silo. (Ex. A).

Schieltz also owns an adjoining parcel consisting of approximately 16.9 acres of unimproved ground, which is not part of this appeal. He purchased the two properties in 2014; they are located near his family farm. Schieltz testified the adjoining site is used in conjunction with the subject parcel. (Ex. I). The Board of Review submitted aerial photographs of the subject and the surrounding parcels. (Exs. I & J). The photographs show the outbuildings comprise the majority of the subject property site and at least six Schieltz Family Farm parcels surround it and the adjacent parcel. (See Attachments Ex. J (subject parcel) & Ex. I (surrounding parcels)).

The previous owner of the subject property had a dairy operation, and Schieltz testified he has converted most of the agricultural buildings for use in his cattle operation. He converted the milking barn to a loafing barn; and the hog floor and building, as well as the barn lean-to, into two cattle yards. He uses the machine shed to store hay and equipment, and uses the two grain bins to dry and store grain from his father's farm. (PAAB Appeal). Schieltz testified he uses everything on the subject property other than the Harvestore silo.

Schieltz provided details of his cattle operation and future plans to an employee of the Assessor's Office. (Ex. E). This included his intention to raise a premium line of

beef breeding stock, American Blue Cattle. His plan outlined five years of projected livestock purchases in addition to his intentions with the tillable ground and adjoining timber pasture ground.

Schieltz testified he started with five head of cattle in 2014 and has had as many as 46 head on the subject parcel since that time. He currently has 37 head of cattle on the parcel which roam from the subject's buildings to his adjoining parcel to pasture. Schieltz provided updated information to the Board of Review outlining his livestock sales in 2018, as well as his 2018 equipment purchases from his brother; including a John Deere tractor, a New Holland discbine, a H & S hay rake, a Massey Ferguson disc, and a Snowco grain auger. (Ex. F & G). He testified these items cost approximately \$31,500. He also testified he has had at least eight cattle sales so far in 2019, and his updated business plan projects 2019 income of \$43,579; \$25,579 of which is expected from the sale of 1.8 acres to the State for a road project. (Exs. G & H). Expenses are projected at \$29,313, of which \$12,013 is depreciation. Perhaps the most telling depiction of his operation is the picture of his livestock on the subject property submitted to the Board of Review. (Ex. F).



Schieltz testified he works in sales for Truck Country selling equipment to large farming operations. He is also in partnership with his brother Larry and operates TLCS, LLC, which manages and runs 266-acres of the family farm – Schieltz Family Farm LLC.

He and his brother grow corn, soybeans, and alfalfa. The purchase of the subject property was important because of its proximity to the family farm, which allows for convenient storage of equipment TLCS uses in its operations of the family farm. Schieltz is not a member or member manager of Schieltz Family Farm, LLC; rather, his mother and father own it. He anticipates inheriting part of the operation one day. Schieltz also rents other non-family ground to grow alfalfa for his own cattle. He originally had hay on approximately 2 acres of the subject property, but has since planted corn. Schieltz does not have employees to assist him in his cattle operation, but his brother helps him when needed. Most days Schieltz comes home after dark to care for the livestock and perform other chores on his property. He testified his typical day consists of 12 to 15 hours of work.

Dubuque County Assessor David Kubik testified on behalf of the Board of Review. He stated his office approaches new property owners of agriculturally classified parcels to advise them of the standards his office applies in arriving at a determination of classification. If a parcel is 40 or more acres it is classified agricultural. If a parcel has 10 or more crop acres it is classified agricultural. For smaller parcels or what might be considered non-traditional parcels, Kubik stated if the owner is achieving net income or attempting net income of at least \$2,600 annually the property would be classified agricultural. The \$2,600 figure is equivalent to a \$260 per acre rental rate (as provided by ISU for Dubuque County) for ten acres. Though it is not clear whether Kubik meant gross or net income, one email exchange he had with Schieltz indicated he and the Board of Review were trying to ascertain net income. (Ex. H). If the property owner can meet that threshold, the agricultural classification is allowed for three years at which time the issue is revisited to determine whether these profits have been achieved or whether there have been changes to the operation to warrant reconsideration. In order to make this determination information of projected income and expenses is requested

of the property owner. Kubik stated he believes classification is completely inconsistent across the State.

Kubik testified about communications with Schieltz relating to the subject's classification dating back to 2017 and submitted notes maintained by his office detailing those communications. (Ex. D). The communication includes several e-mail and voice mail exchanges between Schieltz and staff, as well as internal office discussions. A Schedule F form and an updated business plan were requested from Schieltz. Kubik asserts Schieltz's business plan submitted to the Board of Review was "narrative only" and contained "no quantifiable information." The Board of Review looked at the information submitted and through the Assessor requested more details from Schieltz including building depreciation, utilities and insurance costs. (Ex. H). Kubik testified that while he agreed agricultural activity was taking place on the property, Schieltz was not achieving a profit year after year and could not demonstrate a change in the operation to show "stabilized" income. For this reason, the classification was changed to residential. Kubik indicated he considered the subject parcel together with the adjacent 16-acre parcel when classifying the property. In order to be less "punitive", he determined the adjacent property would remain classified as agricultural.

Kubik stated he did not consider Schieltz's occupation or operation of TLCS, LLC, or his rental of surrounding farm ground in arriving at his classification decision. He said he has no way to know who rents what property. However, he did note that if Schieltz became a part owner of Schieltz Family Farm, LLC, then the subject parcel would be classified agricultural. Schieltz questioned this rationale given his adjoining parcel's classification as agricultural. Kubik stated his belief that if Schieltz's parcels were combined, both would be classified residential. He again acknowledged the adjoining parcel was classified agricultural, essentially as a favor.

It appears the Board of Review's decision was based largely on the fact it could not determine exactly how much income is attributable to this specific parcel as compared to Schieltz's entire agricultural operation. (Board of Review Minutes).

Schieltz was critical of the guidelines used in his case compared to large corporate farms and believes they have contributed to the disappearance of the small

family farms. He also registered concern over what he believes is a lack of continuity or consistency in applying standards or guidelines among the different counties of this State.

Analysis & Conclusions of Law

Schieltz asserts the subject property is misclassified as residential and should instead be classified agricultural. He bears the burden of proof. § 441.21(3).

Iowa assessors are to classify and value property following the provisions of the Iowa Code and administrative rules adopted by the Iowa Department of Revenue (IDR) and must also rely on other directives or manuals IDR issues. Iowa Code §§ 441.17(4), 441.21(1)(h). IDR has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code r. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. *Id.* The determination of a property’s classification “is to be decided on the basis of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989).

The assessment is determined as of January 1 of the year of the assessment. §§ 428.4, 441.46; Iowa Admin. Code R. 701-71.2. Particularly when not previously adjudicated, a property’s prior classification is not conclusive and binding in subsequent years because each “tax year is an individual assessment which does not grow out of the same transaction.” *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (1989). See also § 441.21(3)(b)(3).

Residential property “shall include all land and buildings which are primarily used or intended for human habitation.” R. 701-71.1(4). This includes the dwelling as well as structures used in conjunction with the dwelling, such as garages and sheds. *Id.*

Agricultural property includes land and improvements used in good faith primarily for agricultural purposes. R. 701-71.1(3). Land and nonresidential improvements

shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest and fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in the subrule.

Id.

Regardless of any guidelines or criteria established by the Assessor's Office and Board of Review here, the foregoing is the law to be applied. See Iowa Admin. Code R. 701-71.1(1) (noting the assessor is to make the determination "*following the guidelines set forth in this rule*") (emphasis added). We find there is no question the property is used for agricultural purposes and the Board of Review does not contest this point. There also appears to be no serious contention the agricultural activities are being done in good faith. This case, like most others, turns on questions of whether the agricultural use is being done with an intent to profit and is the property's primary use.

The income information Schieltz provided shows a gross income of \$3851 in 2018 and a projected gross income of \$18,000 (even excluding the government purchase). This income was generated from livestock sales. Expenses in 2018 indicated a net loss, but projected expenses for 2019 would indicate a net profit. Schieltz also submitted two different and detailed business plans, one from 2015 and an updated plan for 2019. These documents indicate Schieltz continues to methodically grow and intends to profit not only from his cattle operation, but also his other agricultural endeavors. (Exs. E-F). Accordingly, we conclude the agricultural use conducted on the subject property is being done with an intent to profit.

Turning to primary use, the record indicates the subject property has both a residential and an agricultural use. In such cases, PAAB is often presented with the difficult task of weighing the facts and circumstances in an effort to decide the primary use of the property. But we find this case is not so difficult.

At face value, we question how such a property could be classified residential in the first place. Aerial photographs of the property show the parcel contains numerous agricultural buildings and the majority of the site is used for agricultural purposes. An

observation of the property would also demonstrate it is intensively used – with numerous head of livestock on the site at a given time. Lastly, even if not owned by Schieltz himself, adjoining and neighboring parcels are owned by the “Schieltz Family Farm, LLC,” and Schieltz testified he contract farms it. Though it may be impractical for an assessor to know who farms every piece of property in his or her county, once it is made clear the information should not be ignored. We think these readily observable facts indicate the subject’s primary use to be agricultural.

Schieltz’s evidence and testimony further substantiates that conclusion. He testified to the number of cattle on the property – currently 37 head. He discussed how this property was used in conjunction with other agricultural land he farms with his brother. He testified that roughly two acres of the subject was used to grow hay, but is now used for corn. Given the foregoing, we find substantial evidence shows the subject’s primary use is agricultural.

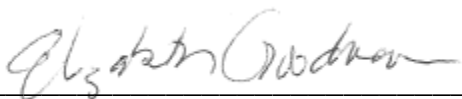
Schieltz’s property is distinguishable from other PAAB appeals involving small acreages where the owner resides in a new or existing dwelling, may grow some hay, may have some livestock or chickens (mainly for personal use), and may dream of being self-sufficient or of instilling a strong work ethic in their children. These owners do not routinely have significant agricultural improvements on the land, much farming equipment, farming experience, and the facts did not demonstrate the agricultural use was being done with an intent to profit. See *Reinboldt v. Cedar Cnty. Bd. of Review*, PAAB Docket No. 2019-016-00042R (October 21, 2019); *Shaw v. Dallas Cnty. Bd. of Review*, PAAB Docket No. 2018-025-00091R (May 30, 2019); *Franich v. Scott Cnty. Bd. of Review*, PAAB Docket No. 2017-082-00364R (2017-082-00264R); *Chapman v. Dallas Cnty. Bd. of Review*, 2017-025-10178R (July 23, 2018); and *Miller v. Scott Cnty. Bd. of Review*, PAAB Docket No. 2015-082-01024R (July 8, 2016).

Viewing the record as a whole, we find sufficient evidence demonstrates the present and primary use of the subject property as of January 1, 2019, was agricultural and thus Schieltz has established that the subject property was misclassified.

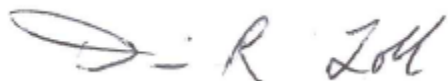
Order

PAAB HEREBY MODIFIES the Dubuque County Board of Review's action and orders that the subject property's classification be changed to agricultural for the January 1, 2019 assessment.

PAAB ORDERS the Board of Review/Assessor to revalue the subject property as agricultural real estate as of January 1, 2019, and file the modified assessment with PAAB within 15 days of the date of this Order. Schieltz then has 10 days to file an objection, if any. Subsequently, PAAB will issue its final agency action setting the property's assessed value as of January 1, 2019.



Elizabeth Goodman, Board Member



Dennis Loll, Board Member



Karen Oberman, Board Member

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Dubuque County Board of Review by eFile

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